

## **REMARKS**

### ***Amendments to the Claims***

Upon entry of the foregoing amendment, claims 1 –19 are pending in the application. Of the pending claims, claims 1, 2, 3, and 18 are independent.

### ***Drawings:***

The Office Action objects to the drawings for the reason that they do not show two features of the invention specified in the claims, to-wit; guide bosses and an electric motor. In fact the drawings as originally filed do show guide bosses and an electric motor. Through transcription error, the guide bosses referenced in the original specification on page 5 at line 26 are listed as "not shown." The amendment to the specification and drawings add the reference number 27 which properly identifies the guide bosses in figure 2. No new matter is added by this amendment as no lines on the drawings have been changed. The originally filed drawings show the guide bosses and identifying them with a reference numeral added by amendment is not new matter.

With regard to the electric motor, actuation of moving parts and ergonomic supports by electric motor is a conventional feature well known to those skilled in the art. Pursuant to 37 C.F.R. 1.83(a), conventional features "should be" shown by graphical depiction, such as a labeled rectangular box. The originally filed drawings showed just such a box, identified as housing 38 in the specification at page 4, line 17. As is spelled out in that paragraph of the specification, the cable 36 may be pulled by mechanical means or by an electric motor.

### ***Claim objections***

The amendments to the claims cure the claim objections to claims 4 and 14 recited in the office action.

#### ***I. Claim Rejections under 35 U.S.C. § 112***

The Examiner has rejected claims 4, 13 and 14 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

All objections under 35 U.S.C. §112(1) are cured by the amendments to the specification. These amendments transport the language originally disclosed in claims 4, 13 and 14 into the specification, as is provided in MPEP §608.01(l). These amendments to the specification, together with the original support of the cited claims, provide ample support for the enablement of claims 4, 13 and 14.

#### ***II. Claim Rejections under 35 U.S.C. § 102(b)***

##### **The first Schwarz Patent, U.S. Patent No. 3,106,423**

The Examiner has rejected claims 1-4 and 8-19 as being anticipated by U.S. Patent No. 3,106,423 to Schwarz ("the '423 patent"). The Schwarz patent fails to establish a *prima facie* case of anticipation against the present claims. The recited elements of the Schwarz patent do not anticipate the limitations of the present claims. Neither do the movements of those elements in relation to one another anticipate the movements of the present invention as recited in the claim limitations.

There is no traction applied to any element in the '423 patent. The '423 patent element 12, a "pin" (see '423 patent column 2, line 27) is not a traction element. Traction is not applied with that pin.

"The bearing part, is however, not actually adjustable, so that finally, during this rotation, the pin is forwardly or rearwardly adjusted, since the course of the internal screw thread of the bearing part engages the bolts screw thread." (See, '423 patent, column 2, lines 42-51).

The only movement disclosed is a screwing pressure movement outward. There is no traction disclosed anticipating either the traction element of the present claim limitation or the action of the present invention in drawing a paddle out of a housing channel.

In fact there is no housing recited in the '423 patent at all. Element 10 of the '423 patent is a mounting plate (see '423 patent, column 2, line 18). A plate is not a housing. Moreover, there is no channel recited in the '423 patent. The element 11 cited as anticipating a channel is actually a slot. It is described in the '423 patent as a "vertical guide way" ('423 patent, column 2, lines 18-19). A guide way or slot is not a channel.

Finally, independent claim 3 of the presently pending claims recites an arcuate channel. Moreover the extending element is recited as having "an *arcuate* encapsulated end slidingly disposed in said channel" (See, claim 3, page 7, line 36). Element 21 in the '423 patent, cited in the office action as anticipating the extending element of the present invention, is *flat*, as is expressly recited in the '423 patent. It is called "the flat arm 21" (See, '423 patent, column 2, line 30). It is also distinguished

from elements (36) that do not appear flat in figure 3, which shows element 21 being flat.

The Schwarz's '423 patent failing to properly anticipate any of the major limitations recited in the claims, or the interaction between the recited structures, the Schwarz's patent cannot support a *prima facie* case of anticipation under §102(b).

**The Second Schwarz Patent, U.S. Patent No. 4,465,317.**

Claims 1-4 and 8-19 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,465,317 to Schwarz. This patent also fails to support a *prima facie* case of anticipation of the pending claims for largely the same reasons. Like the previous Schwarz patent, the '417 patent uses a pressure screw for actuation and recites no traction element whatsoever. (See, screw 14 in figure 1 and disclosed part of actuator 40 in figure 3.) The screw is disclosed as a "pin". (See, '314 patent, column 2, line 62.) A screwing pin exerting pressure on a leaf spring can in no way anticipate a traction element, as recited in the pending claims.

Likewise, the office action recites element 5 as anticipating the extending element recited in the pending claim. Element 5 is not an extending element; it is a "spring", and it is disclosed as such (See, '317 patent, column 2, line 53). There is a complete absence of anything that may be remotely construed as a channel anywhere in the '317 patent. Figure 3 does not disclose a channel. The fact that lead spring 5 is curved as depicted in figure 3 does not establish a presence of a channel.

Neither is there a housing disclosed in the '317 patent. Element 16, cited in the office action as anticipatory of a housing, is actually a "spring strip". (See, '317 patent, column 2, line 67.)

Like the previous Schwarz patent, the '317 patent discloses a spring that is pushed towards a seat occupant's lumbar spine by a threaded pin. There is no traction. There is no housing or channel. No element disclosed in the Schwartz patent is engaged in extendable communication with a channel of the housing, either by traction or otherwise. Accordingly, neither Schwarz patent establishes a *prima facie* case of anticipation of the structure cited in the pending claims.

**The Elton Patent, U.S. Patent No. 5,286,087**

Claims 1-4 and 8-19 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,286,087 to Elton. Elton fails to establish a *prima facie* case of anticipation against the presently pending claims.

As with the first Schwarz patent, the Elton patent discloses a plate with a slot, not a housing with a channel. Element 60, cited against the pending claims as a housing, is in fact a "plate", and is disclosed as such. (See, Elton, column 3, line 8). Element 58, recited against the pending claims as a channel, is in fact a "slot", and is disclosed as such. (See, Elton, column 3, line 7). There is no traction relationship between the elements in Elton. Element 44, recited in the office action against the structural limitation for a traction element in the pending claims, is a "cam", and is disclosed as such. (See, Elton, column 2, line 59). The action of Elton is to use the cam, attached to a lever (16) to push a pin (56) - which does not exist in the pending application-through a slot in a plate (60). This is a pressure action, not a traction action.

Because none of the elements recited in Elton disclose the structure recited in the presently pending claims, or the action recited in the structural limitations in the

pending claims, Elton cannot establish a *prima facie* case of anticipation of the presently pending claims.

***III. Rejections under 35 U.S.C. § 103***

The Examiner has rejected claims 5-7 as being unpatentable over the Schwarz ('423) patent. For the reasons stated above, the '423 patent does not disclose the structure recited in the pending claims, and does not suggest or motivate such structure, nor the use of plastic. Accordingly, the '423 patent cannot render the pending claims obvious.

***IV. Conclusion***

Accordingly, Applicants respectfully submit that independent claims 1, 2, 3, and 18 are allowable over the prior art of record, including the Schwarz patents and Elton patent. For similar reasons, and for the additional reasons set forth above, Applicants urge that the dependent claims are also allowable.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

  
By: Robert C. Haldiman, Reg. No. 45,437  
Husch & Eppenberger, LLC  
190 Carondelet Plaza  
St. Louis, MO 63105  
314-480-1641  
314-480-1505 FAX

**MARKED UP VERSION OF SPECIFICATION AMENDMENTS**

On page 4 at line 15 :

“Figures 2 and 3 are side views of the flexible pressure plate of the present inventions, 10, incorporated with an extending paddle type lumbar support. Housing, 30 is affixed to the seat frame (not shown) by any of a variety of conventional means, such as a back plate, 34. (The housing, 30, is cut away in Figures 2 and 3.) From housing, 30, projects paddle, 32, which is arcuate in shape in order to achieve an extending motion towards the seat occupant upon movement of paddle, 32, outwards from housing, 30. Paddle, [2] 32, extends out from housing, 30, projecting pressure surface, 33, out to support a passenger's lumbar spine. Paddle, 32, retracts back into its channel, 29, in housing, 30, to reduce lumbar support.”

On page 4 at line 22 after the sentence stating "fixation is had is by conventional means at 22." Please add the following:

"Actuating traction is typically by means of a cable, 36, anchored in housing, 38. Traction may also be applied by any of the following elements: a wire, a bowden cable, a hard drawn wire, a pin, a rod, a bracket and/or a spoke. Communication between the extending element 32, and the actuator may also be via a piston, a screw, a rocker, a racket, a pin, a can, a lever or a cantilever. Actuation may be achieved by a hydraulic device, a pneumatic device, a bowden cable, electric motor, or a mechanical device. Each of these actuation means, communication means and elements are well known to those skilled in the art."

On page 5 at line 22:

"Figure 4 is a bottom view of the flexible pressure plate, 10, installed on a push paddle, 32. The visible underside of push paddle, 32, depicts a series of ridges molded or stamped into the paddle to add rigidity to the portion of the paddle that slides in and out of channel, 29, in housing, 30. These ridges taper a flat surface at pressure surface end, 33. The ridges also engage guide bosses [(not shown)] 27 that define the channel, 29, within housing, 30."